

December 31, 2019

Mr. Eric Chodnicki
Daft McCune Walker, Inc.
501 Fairmount Avenue, Suite 300
Towson, MD 21286

Re: Sassafras Solar Facility – 632 Freeland Road
Forest Conservation Variance
Tracking #03-19-3087

Dear Mr. Chodnicki:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on September 27, 2019. This request proposes to base the afforestation required by Section 33-6-111 of the Forest Conservation Law on the 13.3-acre limit of disturbance (LOD) rather than the entire 99.5-acre property to install a solar array facility and associated infrastructure on a 100-acre +/- farm. No forest, specimen trees, streams, wetlands, or associated buffers will be directly impacted by construction of the solar facility. Using the LOD as the net tract area would require the applicant to provide 2.7 acres of afforestation instead of retaining all of the forest onsite required under full compliance. A preliminary Forest Conservation Plan and Forest Buffer Protection Plan (FCP/FBPP) that included a Forest Conservation Worksheet (FCW) was included with the variance application and will be addressed in separate correspondence from EPS staff. However, it should be noted that the FCW was only based on the LOD. No FCW based on full compliance with the Forest Conservation Law was provided.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner to show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The majority of the property is currently being used for crop production, including the area where the solar array is proposed. Two functioning homesteads also exist on the property. Approximately 24 acres of forest exist on the

property's net tract area according to EPS staff measurement. Retention of that forest, most of which is in Forest Buffer area, would meet the 20.9-acre afforestation threshold based on full compliance. Furthermore, full application of the law would not interfere with the property's current or proposed uses; thus, the petitioner would continue to realize beneficial use of the property without the requested variance. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The surrounding neighborhood consists of similar properties containing large parcels used for agriculture production as well as some forested areas, all under the same zoning as the subject property requiring a high forest conservation threshold. Therefore, the petitioner's plight is not due to unique circumstances, but rather the general conditions of the neighborhood and the petitioner's desire not to fully comply. Consequently, we find that the second criterion has not been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. Similar properties are the subject of solar facility proposals which must meet all Baltimore County land use regulations. Granting the requested variance would not affect the consistency of the project with the character of its neighborhood since the variance does not impact the design of the solar facility or entail forest clearing. Therefore, we find that granting the variance will not alter the essential character of the neighborhood, and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. While granting the variance would not directly impact any streams, wetlands, or floodplains, allowing forest conservation requirements to be met based on the LOD rather than retaining forest in Forest Conservation Easement (FCE) would preclude protection of forest that is priority for retention given its contiguity with riparian buffers. Consequently, this unprotected, high priority forest could possibly be cleared in the future thus adversely impacting water quality. Based on this finding, this criterion has not been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions creating a condition or circumstance necessitating this variance prior to its request. Therefore, this criterion has been met.

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The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of the State-mandated forest conservation law. The applicant requests that forest conservation requirements be applied to only the 13.3-acre LOD resulting in an afforestation requirement of 2.7 acres, rather than protecting existing forest on the 99.5-acre property. The application does not propose any onsite planting to fulfill this 2.7-acre requirement, and the proposed retention of forest onsite shall not count as afforestation credit. Ironically, full compliance with the law using the entire site acreage and not clearing any forest would result in no planting requirement, only the retention of the approximately 24.0 acres of existing forest in FCE, much of which would be in Forest Buffer Easement. Furthermore, since retention of 2.7 acres of forest in FCE is proposed as afforestation in the variance application, the petitioner has demonstrated that recordation of protective easements is not a hardship. Therefore, the entire forest on net tract area can be retained in FCE with no adverse effect on either the existing or proposed use of the property. Moreover, all forest onsite is priority for retention, thus any clearing of that forest, regardless of the break-even point, would have to meet Section 33-6-111(b) of the Forest Conservation Law, which the current land use proposal does not. In summary, granting this variance would leave approximately 24 acres of forest that is high priority for retention vulnerable to future clearing by not protecting it in FCE. As such, we find the requested variance to be wholly inconsistent with the spirit and intent of the forest conservation law. Therefore, this criterion has not been met.

Based on our review, this Department finds that the required variance criteria have not been met. Therefore, the requested variance is hereby denied in accordance with Section 33-6-116 of the Baltimore County Code.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/lbe

c. Ms. Kate Larkin, Sassafras Solar LLC
Mr. Charles Gary Atkinson and Mr. Stephen Gordon Atkinson, Owners